

DRAFT

APPENDICES

Sample proportionate share calculation

Letter to Kennedy re: Excess Costs

EDGAR 80.3 and 80.32

Sample semi-annual certification, personnel activity report

**APPENDIX A
PROPORTIONATE SHARE CALCULATION FOR
PARENTALLY PLACED PRIVATE SCHOOL CHILDREN-EXAMPLE ONLY**

Taken from:

Department of Education
34 CFR Parts 300 and 301
Assistance to States for the Education of Children with Disabilities and Preschool
Grants for Children with Disabilities: Final Rule

Regulations Page 46814

The following outlines the calculations for the example of how
the proportionate share is calculated.

Proportionate Share Calculation for Parentally-Placed Private
School Children with Disabilities For Flintstone School
District:

Number of eligible children with disabilities in public schools in the LEA.....	300
Number of parentally-placed eligible children with disabilities in private elementary schools and secondary schools located in the LEA.....	20

Total number of eligible children.....	320
Federal Flow-Through Funds to Flintstone School District	
Total allocation to Flintstone.....	\$152,500
Calculating Proportionate Share:	
Total allocation to Flintstone.....	152,500
Divided by total number of eligible children.....	320
Average allocation per eligible child.....	476.5625
Multiplied by the number of parentally placed children with disabilities.....	20
Amount to be expended for parentally-placed children with disabilities.....	9,531.25

54 IDELR 201

110 LRP 17262

Letter to Kennedy

Office of Special Education Programs

N/A

September 25, 2009

Related Index Numbers

205.015 Excess Costs

Judge / Administrative Officer

Patricia J. Guard, Acting Director

Case Summary

In response to a letter from an advisor for the California Special Education Fiscal Support Alliance, OSEP explained that in determining whether it has spent the minimum amount on students with disabilities prior to using Part B funds, a district may include some general education costs. OSEP noted that Appendix A to 34 CFR Part 300 provides that an LEA must spend at least the average annual per student expenditure on the education of an elementary or secondary school child with a disability before applying Part B funds to the excess cost of providing special education and related services. The education of a child with a disability may include general education, OSEP observed. Thus, "when determining if the LEA has spent the required minimum amount ... that amount can include expenditures for regular education ... if those costs can be reasonably attributed to the education of children with disabilities," OSEP Acting Director Patricia J. Guard wrote. Such costs could include, for example, general education teacher salaries for classes where children with disabilities are educated with nondisabled students. OSEP also stated that districts should not include in their calculations expenditures for purposes other than elementary school or secondary school students, such as money spent for adult education. Furthermore, in situations where funds are spent on services for both elementary school and secondary school students but there is not a distinct cost associated with each group, a state may provide

guidance on how to allocate the costs. "However, the State cannot advise an LEA to exclude those expenditures," Guard wrote. Only capital outlay and debt services are exempt.

Full Text

Appearances:

Dear Mr. Kennedy:

This is in response to your letter dated June 1, 2009 to Mr. William W. Knudsen, former Acting Director of the Office of Special Education Programs (OSEP), regarding the excess costs, supplement not supplant, and local maintenance of effort requirements in Part B of the Individuals with Disabilities Education Act (IDEA) and its implementing regulations at 34 CFR Part 300. Your questions and OSEP's responses are indicated below.

"Question 1. Does the requirement that the average per pupil expenditure be expended before 'excess costs' suggest that, first the expenditure for the general education of a student with disabilities be determined and, then, any remaining amount of average per pupil expenditure be expended for the provision of special education and related services BEFORE state and Federal Part B funds can be used to pay the excess costs associated with the provision of special education and related services?"

OSEP's Response: Yes. As you stated in your letter, the last sentence of the first paragraph of Appendix A to 34 CFR Part 300 on the excess costs calculation states "a [local educational agency] LEA must spend at least the average annual per student expenditure on the education of an elementary or secondary school child with a disability before funds under Part B of the Act are used to pay the excess cost of providing special education and related services". Appendix A provides an example of how to calculate the minimum amount of funds an LEA must spend for the education of children with disabilities prior to using funds under Part B of the IDEA. Because the education of a child with a disability may include regular education, as well as special education and

related services, when determining if the LEA has spent the required minimum amount for the education of its children with disabilities, that amount can include expenditures for regular education (such as regular education teacher salaries for classes where children with disabilities are educated with children who are nondisabled), if those costs can be reasonably attributed to the education of children with disabilities. See April 8, 2008 letter to Ms. Plagata-Neubauer. Please note that an LEA must meet the excess cost requirement in 34 CFR § 300.202(a)(2) before Part B funds, not State funds, are used.

"Question 2. Can the State define what expenditures are NOT 'for elementary' and 'for secondary' students and thus exclude those expenditures, in addition to those for capital outlay and debt services, from the calculation of 'total expenditures for elementary (and secondary) students'?"

OSEP's Response: The process of computing excess cost, as set out in Appendix A to 34 CFR Part 300, requires the LEA to determine the total amount of its expenditures for elementary school (or secondary school) students from all sources -- local, State and federal (including Part B) in the preceding school year and only capital outlay and debt services can be excluded. As you note, in the April 8, 2008 letter to Ms. Plagata-Neubauer, OSEP states that such expenditures are not limited to those made for the education of elementary school (or secondary school) students. Therefore, the LEA must include all expenditures for elementary school (or secondary school) students from all sources in its calculation, as described above, but should not include expenditures that it did not make or that were made for purposes other than for elementary school (or secondary school) students. As you mention in the example in your letter, funds provided for adult education would not have been expended for elementary school (or secondary school) students and would therefore not enter into the calculation. You also gave some examples in your letter of expenditures that are not

solely for an LEA's elementary school (or secondary school) students, such as expenditures for a statewide services high speed communications system. In cases where there is not a distinct and separate cost associated with elementary school (or secondary school) students, but the funds are expended for elementary school and secondary school students, the State may provide guidance to LEAs on how to allocate that expenditure among its elementary and secondary school students. However, the State cannot advise an LEA to exclude those expenditures.

"Question 3. Does the use of the term 'for the education' of [in § 300.203(a) and (b)] mean that the expenditures for the total education of a child with disabilities, including both general and special education (and related services) are to be considered in both the excess cost process and the supplant, not supplement process, or can those processes still focus only on the provision of special education and related services?"

OSEP's Response: An LEA meets the excess cost requirement if it has spent at least a minimum average amount for the education of children with disabilities, before using Part B funds. 34 CFR § 300.202(b)(2)(i). The nonsupplanting requirement is met by meeting the maintenance of effort requirements in 34 CFR § 300.203(a). An LEA meets the maintenance of effort requirements if the LEA budgets, for the education of children with disabilities, at least the same total or per capita amount from either local funds only, or from the combination of State and local funds, as the LEA spent for that purpose from the same source for the most recent prior year for which information is available. 34 CFR § 300.203(b)(1). Under both tests, when calculating the amount an LEA has spent on the education of children with disabilities, that amount can include expenditures for special education and related services, and regular education, if those costs can be reasonably attributed to the education of children with disabilities.

"Question 4. Does the non-supplanting requirement of State funds mean that, in meeting the

excess cost and supplement, not supplant requirements, the LEA must fully expend the prior year's level of local AND STATE funds before Part B can be used for the excess costs?"

OSEP's Response: No. As stated above, the excess cost and supplement/not supplant provisions describe separate tests that LEAs must meet in order to comply with the Part B requirements around the use of Part B funds. Under the non-supplanting requirement in 34 CFR § 300.202(a)(3), Federal Part B dollars must be used to supplement State, local, and other Federal funds used for providing services to children with disabilities and not to supplant those funds. As explained in our response to Question C-6 of the April 13, 2009 Guidance related to the American Recovery and Reinvestment Act (ARRA) of 2009, there is an integral relationship between an LEA maintaining effort and the supplement/not supplant requirement. The LEA must maintain (or exceed) its level of fiscal effort, using either local, or State and local, funds, on a per capita or total basis, from year to year in order to maintain fiscal effort and ensure that it is using Federal Part B funds to supplement those funds and not to supplant them. See 34 CFR § 300.203. Again, this is a separate test from the excess cost provisions.

In your February 24, 2009 electronic mail inquiry to the Department's Information Resource Center, and in a follow-up conversation with Dr. Deborah Morrow on July 15, 2009, you ask whether the language in 34 CFR § 300.202(a)(2) which states that "amounts provided to the LEA under Part B of the Act must be used only to pay the excess costs of providing *special education and related services* [emphasis added] to children with disabilities," consistent with 34 CFR § 300.202(b) and the language in 34 CFR § 300.203(a) which states that "funds provided to an LEA under Part B of the Act must not be used to reduce the level of expenditures for *the education* of [emphasis added] children with disabilities ..." is an intentional difference and what that difference means in terms of computing both excess cost and maintenance of fiscal effort.

OSEP's Response: The language in the two provisions is intentional. However, as noted above, when determining the amount an LEA has spent on the education of children with disabilities for purpose of computing both excess cost and maintenance of effort, that amount can include expenditures for special education and related services, and regular education, if those costs can be reasonably attributed to the education of children with disabilities. Once an LEA meets the excess cost requirement by spending at least a minimum average amount for the education of its children with disabilities, Part B funds must, in general, be used to pay for the provision of special education and related services to children with disabilities. That is why the language in 34 CFR § 300.202(a)(2) refers to special education and related services.

Based on section 607(e) of the IDEA, we are informing you that our response is provided as informal guidance and is not legally binding, but represents an interpretation by the U.S. Department of Education of the IDEA in the context of the specific facts presented.

If you have further questions, please do not hesitate to contact Dr. Deborah Morrow at 202-245 7456.

Regulations Cited

34 CFR 300.202(a)(2)
34 CFR 300.202(b)(2)(i)
34 CFR 300.203(a)
34 CFR 300.203(b)(1)

This subpart contains general rules pertaining to this part and procedures for control of exceptions from this part.

(Authority: 20 U.S.C. 3474; OMB Circular A-102)

§ 80.3 Definitions.

As used in this part:

Accrued expenditures mean the charges incurred by the grantee during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) Services performed by employees, contractors, subgrantees, subcontractors, and other payees; and
- (3) Other amounts becoming owed under programs for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

Accrued income means the sum of:

- (1) Earnings during a given period from services performed by the grantee and goods and other tangible property delivered to purchasers, and
- (2) Amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

Acquisition cost of an item of purchased equipment means the net invoice unit price of the property including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the grantee's regular accounting practices.

Administrative requirements mean those matters common to grants in general, such as financial management, kinds and frequency of reports, and retention of records. These are distinguished from *programmatic* requirements, which concern matters that can be treated only on a program-by-program or grant-by-grant basis, such as kinds of activities that can be supported by grants under a particular program.

Awarding agency means (1) with respect to a grant, the Federal agency, and (2) with respect to a subgrant, the party that awarded the subgrant.

Cash contributions means the grantee's cash outlay, including the outlay of money contributed to the grantee or subgrantee by other public agencies and institutions, and private organizations and individuals. When authorized by Federal legislation, Federal funds received from other assistance agreements may be considered as grantee or subgrantee cash contributions.

Contract means (except as used in the definitions for *grant* and *subgrant* in this section and except where qualified by *Federal*) a procurement contract under a grant or subgrant, and means a procurement subcontract under a contract.

Cost sharing or matching means the value of the third party in-kind contributions and the portion of the costs of a federally assisted project or program not borne by the Federal Government.

Cost-type contract means a contract or subcontract under a grant in which the contractor or subcontractor is paid on the basis of the costs it incurs, with or without a fee.

Equipment means tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit. A grantee may use its own definition of equipment provided that such definition would at least include all equipment defined above.

Expenditure report means:

- (1) For nonconstruction grants, the SF-269 "Financial Status Report" (or other equivalent report);

§ 80.32 Equipment.

- (a) *Title.* Subject to the obligations and conditions set forth in this section, title to equipment acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.
- (b) *States.* A State will use, manage, and dispose of equipment acquired under a grant by the State in accordance with State laws and procedures. Other grantees and subgrantees will follow paragraphs (c) through (e) of this section.
- (c) *Use.* (1) Equipment shall be used by the grantee or subgrantee in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original program or project, the equipment may be used in other activities currently or previously supported by a Federal agency.
- (2) The grantee or subgrantee shall also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, providing such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use shall be given to other programs or projects supported by the awarding agency. User fees should be considered if appropriate.
- (3) Notwithstanding the encouragement in §80.25(a) to earn program income, the grantee or subgrantee must not use equipment acquired with grant funds to provide services for a fee to compete unfairly with private companies that provide equivalent services, unless specifically permitted or contemplated by Federal statute.
- (4) When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency.
- (d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part with grant funds, until disposition takes place will, as a minimum, meet the following requirements:
- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of property, who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft shall be investigated.
- (4) Adequate maintenance procedures must be developed to keep the property in good condition.
- (5) If the grantee or subgrantee is authorized or required to sell the property, proper sales procedures must be established to ensure the highest possible return.
- (e) *Disposition.* When original or replacement equipment acquired under a grant or subgrant is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:
- (1) Items of equipment with a current per-unit fair market value of less than \$5,000 may be retained, sold or otherwise disposed of with no further obligation to the awarding agency.
- (2) Items of equipment with a current per unit fair market value in excess of \$5,000 may be retained or sold and the awarding agency shall have a right to an amount calculated by multiplying the current market value or proceeds from sale by the awarding agency's share of the equipment.
- (3) In cases where a grantee or subgrantee fails to take appropriate disposition actions, the awarding agency may direct the grantee or subgrantee to take excess and disposition actions.

(f) *Federal equipment.* In the event a grantee or subgrantee is provided federally-owned equipment:

(1) Title will remain vested in the Federal Government.

(2) Grantees or subgrantees will manage the equipment in accordance with Federal agency rules and procedures, and submit an annual inventory listing.

(3) When the equipment is no longer needed, the grantee or subgrantee will request disposition instructions from the Federal agency.

(g) *Right to transfer title.* The Federal awarding agency may reserve the right to transfer title to the Federal Government or a third party named by the awarding agency when such a third party is otherwise eligible under existing statutes. Such transfers shall be subject to the following standards:

(1) The property shall be identified in the grant or otherwise made known to the grantee in writing.

(2) The Federal awarding agency shall issue disposition instruction within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar-day period the grantee shall follow §80.32(e).

(3) When title to equipment is transferred, the grantee shall be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

(h) The provisions of paragraphs (c), (d), (e), and (g) of this section do not apply to disaster assistance under 20 U.S.C. 241–1(b)–(c) and the construction provisions of the Impact Aid Program, 20 U.S.C. 631–647.

(Approved by the Office of Management and Budget under control number 1880–0517)

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

[53 FR 8071 and 8087, Mar. 11, 1988, as amended at 53 FR 8072, Mar. 11, 1988; 53 FR 49143, Dec. 6, 1988]

§ 80.33 Supplies.

(a) *Title.* Title to supplies acquired under a grant or subgrant will vest, upon acquisition, in the grantee or subgrantee respectively.

(b) *Disposition.* If there is a residual inventory of unused supplies exceeding \$5,000 in total aggregate fair market value upon termination or completion of the award, and if the supplies are not needed for any other federally sponsored programs or projects, the grantee or subgrantee shall compensate the awarding agency for its share.

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

§ 80.34 Copyrights.

The Federal awarding agency reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

(a) The copyright in any work developed under a grant, subgrant, or contract under a grant or subgrant; and

(b) Any rights of copyright to which a grantee, subgrantee or a contractor purchases ownership with grant support.

(Authority: 20 U.S.C. 3474; OMB Circular A–102)

§ 80.35 Subawards to debarred and suspended parties.

Semi-Annual Certification

(Staff Working Solely on one Cost Objective)

This is to certify that Jean Smith has worked 100% of his/her time for the period March 1, 2009 through August 31, 2009 on program number DOE 555.

Signature of Employee

Printed Name of Employee

Date

Signature of Supervisor

Printed Name of Supervisor

Date

Personnel Activity Report

Name _____

Department _____

Account No.	100	200	300	500	600	700	Totals
Account Title	Indirect	ECIA (Federal)	State (be Specific)	Annual Leave	Sick Leave	Holiday Leave	
Mon. _____	0	0	0	0	0	8	8
Tues. _____	0	7	1	0	0	0	8
Wed. _____	0	8	0	0	0	0	8
Thurs. _____	0	6	2	0	0	0	8
Fri. _____	0	2	2	4	0	0	8
Mon. _____	2	5	1	0	0	0	8
Tues. _____	1	6	1	0	0	0	8
Wed. _____	0	3	5	0	0	0	8
Thurs. _____	0	6	0	0	0	0	8
Fri. _____	1	6	1	0	0	0	8
Totals	4	49	13	4	0	8	80

I certify that this report represents a true recording of effort expended for the period indicated and that I have full knowledge of those activities.

Signature of Employee / Date

Responsible Official / Date

Salary Charging:

Totals	4	49	13	4	0	8	80
Percent of Total*	5.00%	61.25%	16.25%	5.00%	0.00%	10.00%	100.00%
Bi-Weekly Salary	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	1,700.00	
Amount Charged	85.00	1,041.25	276.25	85.00	0.00	170.00	1,700.00

* Total Hours for Activity divided by Total Paid Hours for Account No. 100, 4 Hours worked divided by 80 hours = 5.00% charged.